

REMARKS/ARGUMENTS

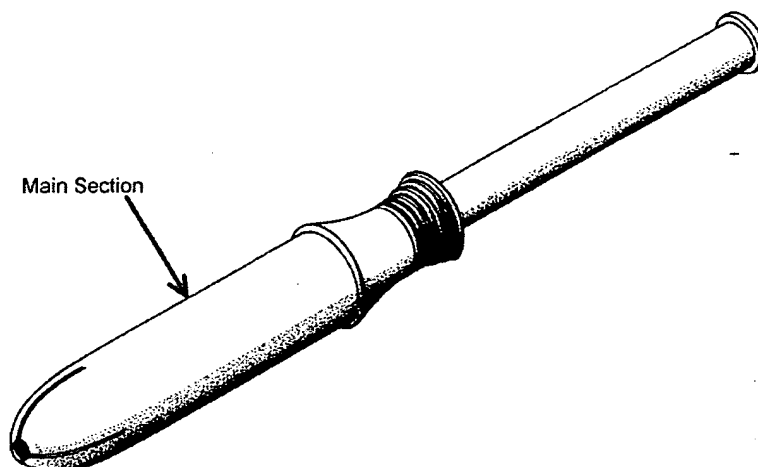
Claims 22 through 24, 26, and 27 are pending in this application. Claim 25 is canceled. For at least the reasons set forth below, Applicants believe the claimed invention is patentable over the cited references. However, if for any reason the Examiner believes the application is not in condition for allowance, Applicant's attorney hereby requests a telephonic interview to further advance the prosecution of the application.

Claims 22 through 24, 26, and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. D250,663 to Koch et al. (hereinafter "Koch").

Claim 22 provides, in part, a main section with a taper ratio of about 1.07 to about 1.15.

Koch is a design patent that simply provides an ornamental design of a tampon applicator with a barrel, a finger grip, and a plunger.

Applicants respectfully submit that Koch fails to disclose or suggest a barrel for use with a tampon applicator assembly with a main section having a taper ratio of about 1.07 to about 1.15, as recited in claim 22. In contrast, the ornamental design of the tampon applicator of Koch has a conventional tampon applicator barrel that is uniformly cylindrical. Consistent with Applicants' contention, the Action concedes that Koch does not disclose a taper ratio. The Action asserts that Koch discloses a main section 16, as clearly shown in the marked Figure below:



The Action further asserts that Koch discloses a tampon inserter having a curved insertion tip similar in structure to the curved insertion tip of the present invention, and, therefore it is reasonable for the Examiner to conclude that the curved insertion tip of Koch would not constitute a severe curvature and accordingly, high diameter to length ratio, and thus enabling easy insertion of the tampon. Thus, the Action points to a curved insertion tip for disclosure of a taper ratio of a main section. Applicants respectfully submit that a curved insertion tip does not disclose or suggest a taper ratio of a main section, as recited by claim 22. Moreover, claim 22 provides an insertion tip having a plurality of petals and a main section having a taper ratio of about 1.07 to about 1.15. Additionally, paragraph [0028] of the application as published, provides that "[b]arrel 14 is sub-divided into three sections, namely an insertion tip 20, a main section 22, and a finger grip 24." Thus, the main section is distinguished from the insertion tip.

The Action additionally cites *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), where the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP 2144.04. As discussed above, a curved insertion tip does not disclose or suggest a taper ratio of a main section, as recited by claim 22. Thus, the differences between the Koch barrel and the main section are not only a recitation of relative dimensions. Furthermore, as

provided on paragraph [0049] and [0051] of the application as published, the "[a]ssembly 10 provides a combination of features, which achieve consumer benefits unavailable in prior assemblies. For example, assembly 10 is easily and comfortably inserted into the body. Here, the taper ratios of insertion tip 20 and main section 22 combine to gradually part the vulva-vaginal channel" and "[f]urther, assembly 10 is easily and comfortably removed from the body. Again, the taper ratios of insertion tip 20, main section 22, as well as flared region 56 of finger grip 24 combine to increase the ease, comfort, and grip during the removal of assembly 10." In addition, as discussed in paragraphs [0054] and [0057] a main section with a taper ratio facilitates molding the barrel. Therefore, the main section of claim 22 performs differently than the Koch inserter, and the claimed device is patentably distinct from Koch.

Applicants respectfully submit that the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. MPEP 2125. In addition, the application must disclose that the drawings are to scale in order for figures to be considered to scale. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). Koch does not disclose that the Figure is to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Koch may not be relied on to show particular sizes if the specification is completely silent on the issue. Koch, which again is a design patent, is completely silent on taper ratio. In addition, the ornamental design of Koch has a conventional tampon applicator barrel that is uniformly cylindrical. In contrast, claim 22 recites that the main section has a taper ratio of about 1.07 to about 1.15. The Action asserts on page 2, lines 12 through 13, that Koch is not relied on for a specific teaching of size, but rather a general teaching of shape and size. However, as discussed above, the ornamental design of Koch has a conventional tampon applicator barrel that is uniformly cylindrical and the Action concedes that Koch does not disclose a taper ratio. Therefore, Koch fails to teach the shape or size of the main portion of claim 22.

Accordingly, Koch fails to disclose or suggest a main section with a taper ratio of about 1.07 to about 1.15, as recited in claim 22.

It is respectfully submitted that claim 22 and claims 23, 24, 26, and 27 depending therefrom, are patentably distinguishable over Koch. Accordingly, reconsideration and withdrawal of the §103(a) rejection are requested.

In addition, dependent claim 26 depends from claim 22, and further includes that the insertion tip have a taper ratio of more than about 0.66, respectively.

Koch does not disclose or suggest that the insertion tip has a taper ratio of more than about 0.66, as recited in claim 26. As discussed above, the Action concedes Koch does not disclose a taper ratio. The Office Action states that Koch discloses a tampon inserter having a curved insertion tip similar in structure to the curved insertion tip of the present invention, and, therefore, it is reasonable for the Examiner to conclude the curved insertion tip of Koch would not constitute a severe curvature. Applicants respectfully disagree. As discussed above, proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. MPEP 2125. In addition, the application must disclose that the drawings are to scale in order for figures to be considered to scale. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332(CCPA 1977). Koch does not disclose that the Figure for this design patent is to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Koch may not be relied on to show particular sizes if the specification is completely silent on the issue. Koch is completely silent on taper ratio.

Therefore, Koch does not disclose or suggest that the insertion tip have a taper ratio of more than about 0.66, as recited in claim 26.

Dependent claim 27 depends from claim 22, and further includes that the plurality of petals have a petal length-to-width ratio of about 2 to about 3.

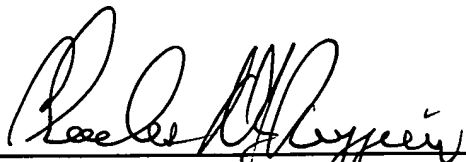
Koch does not disclose or suggest that the plurality of petals have a petal length-to-width ratio of about 2 to about 3, as recited by claim 27. The Action concedes Koch does not disclose the petal length-to-width ratio. The Action asserts that Koch discloses a tampon inserter having an insertion end sized to enable the plunger to expel the pledget. Applicants respectfully disagree. Again, the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale, and the application must disclose that the drawings are to scale in order for figures to be considered to scale. Koch does not disclose that the Figure is to scale. Further, patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue. Thus, the single Figure in Koch may not be relied on to show particular sizes since the specification is completely silent on the issue. Again, the Koch design specification is completely silent on the petal length-to-width ratio. Furthermore, Koch does not disclose or suggest a pledget, let alone a tampon inserter having an insertion end sized to enable the plunger to expel the pledget.

Therefore, Koch does not disclose or suggest that the plurality of petals have a petal length-to-width ratio of about 2 to about 3, as recited in claim 27.

Again, reconsideration and withdrawal of the §103(a) rejection are requested.

In view of the foregoing, applicants respectfully submit that all claims present in this application patentably distinguish over the cited prior art reference. Accordingly, applicants respectfully request favorable reconsideration and withdrawal of the rejections of the claims. Also, applicants respectfully request that this application be passed to allowance.

February 20, 2007

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero". The signature is fluid and cursive, with a large initial "C" and "R".

Charles N.J. Ruggiero, Esq.

Registration No. 28,468

Attorney for Applicants

Ohlandt, Greeley, Ruggiero & Perle, L.L.P.

One Landmark Square

Stamford, CT 06901-2682

Tel: (203) 327-4500